

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
SEPTEMBER 4, 2018**

CALL TO ORDER A meeting of the Flathead County Board of Adjustment was called to order at
6:00 pm approximately 6:00 p.m. at the South Campus Building, 40 11th
Street West, Suite 200, Kalispell, Montana. Board members present were Cal
Dyck, Ole Netteberg, Gina Klempel, Roger Noble and Mark Hash. Mark
Mussman, Rachel Ezell, and Kari Nielsen represented the Flathead County
Planning & Zoning Office.

There were 33 members of the public in attendance.

APPROVAL OF Klempel motioned and Netteberg seconded to approve the August 07, 2018
MINUTES minutes as written. The motion passed unanimously.
6:00 pm

PUBLIC None
COMMENT
(Public matters that
are within the
jurisdiction of the
Board 2-3-103
M.C.A)
6:01 pm

BOARD CHAIR Hash informed the public that there were four items on the agenda and two of
ADDRESSES THE those might possibly be lengthy. He asked that public comment be limited to 3
PUBLIC minutes and that they do not repeat what had been said previously.
6:01 pm

DALTON AND A request from Dalton and Breanna Stupack for a variance to Section
BREANNA 3.09.040(3)(A) of the Flathead County Zoning Regulations (FCZR) to the side
STUPACK yard setback for a principal structure. The applicant is requesting the variance
(FZV-18-02) "to allow for safer approach/parking on the west side. Shifting the footprint of
6:03 pm the house an additional 10 feet to the east nearly accommodates a car
length. This distance is felt to dramatically improve the safety of approach to, as
well as associated departure from home." The property is located at 1750
Whalebone Drive near Kalispell, within the Lower Side Zoning District and
contains approximately 3.2 acres.

STAFF REPORTS <i>6:03 pm</i>	Nielsen reviewed the Staff Report FZV-18-02 for the board
BOARD QUESTIONS <i>6:06 pm</i>	<p>Noble questioned how far up the hill the house would be. Nielsen identified the location on the map.</p> <p>Klempel wondered what the slope was and Nielsen estimated it was about a 40% grade.</p>
APPLICANT PRESENTATION <i>6:07 pm</i>	None
PUBLIC COMMENT <i>6:07pm</i>	None
APPLICANT REBUTTAL <i>6:07pm</i>	None
BOARD DISCUSSION <i>6:07pm</i>	<p>Noble wondered if they could add any conditions to the variance. Mussman said that they were able to attach additional conditions. Noble wanted to add a condition to make sure they did not remove any more trees within the 10' setback to allow for a vegetation buffer. Hash asked if it fit with the site. Nielsen said she believed they were already removed, however, the applicant had indicated that he spoke with the neighbor and he did not voice concern.</p> <p>Hash asked if there were any other neighbor concerns and Nielsen said none were received.</p>
MOTION TO ADOPT F.O.F (FZV-18-02) <i>6:10 pm</i>	Netteberg made a motion, seconded by Klempel, to accept Staff Report FZV-18-02 as Findings-of-Fact.
BOARD DISCUSSION <i>6:10 pm</i>	None

**ROLL CALL TO
ADOPT F.O.F
6:10 pm**

The motion passed unanimously on a roll call vote.

**MOTION TO
APPROVE
(FZV-18-02)
6:10 pm**

Netteberg made a motion, seconded by Klempel, to approve the FZV-18-02.

**ROLL CALL TO
APPROVE
(FZV-18-02)
6:11 pm**

The motion passed unanimously on a roll call vote.

**JAMES AND
VICTORIA
CODONA
(FCU-18-09)
6:11 pm**

A request from James and Victoria Codona for a conditional use permit to operate a 'Home Occupation' using an accessory structure for an auto repair shop on property located within the Westside Zoning District. The property is located at 1258 Two Mile Drive, near Kalispell, MT and is zoned SAG-10 (Suburban Residential). The property contains approximately 9.5 acres.

**STAFF REPORTS
6:11 pm**

Nielsen reviewed the Staff Report FCU-18-09 for the board

**BOARD
QUESTIONS
6:13 pm**

Klempel confirmed with Nielsen that the road was adequate.

Noble wondered if it was a county road and if they would need an approach permit. Nielsen said they would need an updated permit.

**APPLICANT
PRESENTATION
6:14 pm**

James Cadona, 1258 Two Mile Drive, talked about his site plan and business intentions. He said he spoke with his neighbors and there were no objections.

**BOARD
QUESTIONS
6:17 pm**

Klempel wondered if he would have any outside storage of fuel. He replied no.

Netteberg said he liked the plan and the fact the shop would obstruct parked cars. He said it was a big issue for the board that applicants kept their sight orderly.

**PUBLIC
COMMENT**
6:18 pm

None

STAFF REBUTAL
6:18 pm

None

**BOARD
DISCUSSION**
6:18 pm

Hash reviewed concerns that neighbors tended to have with this type of business; including appropriate work hours, unsightly outside storage, and hazardous waste storage. He asked the applicant how he planned to get rid of hazardous waste. Hash asked the staff if there were recommended conditions to add to make sure that environmental hazardous waste would be taken care of. He asked the applicants what he planned for storage. The applicant discussed his plan for storage and said he would call the company to pick up when it became $\frac{3}{4}$ full. He said it would take about 6 months to fill up.

**MOTION TO
ADOPT F.O.F
(FCU-18-09)**
6:22 pm

Klempel made a motion, seconded by Noble, to accept Staff Report FCU-18-09 as Findings-of-Fact.

**BOARD
DISCUSSION**
6:22 pm

None

**ROLL CALL TO
ADOPT F.O.F**
6:22 pm

The motion passed unanimously on a roll call vote.

**MOTION TO
APPROVE
(FCU-18-09)**
6:22 pm

Klempel made a motion, seconded by Netteberg, to approve FCU-18-09.

**BOARD
DISCUSSION**
6:23 pm

None

**ROLL CALL TO
APPROVE
(FCU-18-09)
6:23 pm**

The motion passed unanimously on a roll call vote.

**DON HERBERT
AND
CLEARVIEW
TOWER II, LLC
(FCU-18-07)
6:23 pm**

A request from Sands Surveying, Inc., on behalf of Don Herbert and Clearview Tower II, LLC for a conditional use permit for the placement of a 108' Cellular Communications Tower on property located within the Middle Canyon Zoning District. The property is located at 1291 Belton Stage Road and is zoned CALURS (Canyon Area Land Use Regulatory System). The property contains approximately 20.2 acres.

**STAFF REPORTS
6:23 pm**

Ezell reviewed the Staff Report FCU-18-07 for the board

**BOARD
QUESTIONS
6:27 pm**

None

**APPLICANT
PRESENTATION
6:27 pm**

Eric Mulcahy with Sands Surveying, 2 Village Loop, represented the applicants. The application came before the board a couple of years ago and was denied at that time. The applicants then went back to the drawing board and worked with the land owner to find a site further away from the highway to mitigate the visual impact. They also decided to utilize a monopine cell tower to look like a pine tree. He explained that they had looked at the zoning regulations. They had a balloon study done. He addressed concerns that were raised at the Middle Canyon Land Use Advisory Committee; including lighting and whether or not it would be a monopine. They were proposing a 108' monopine with no lights. FFA did not require lights on this tower. He pointed out that the applicants already had an approval to build a 60' tower but would like a 108' tower so that other communication carriers could use it as well. The tower did not exceed the height limitation. He said technology was changing and the infrastructure needed to be updated as well.

Ryan Purdy with Frampton Purdy Law, 530 W. 19th Street Ste. 301, represented Clearview Tower. He said he was available for any legal questions.

Dave Girling with T-Mobile, 272 Discovery Dr., Bozeman, said the cell tower was a capacity need. He said there was not any cell coverage at the entrance of the park and T-Mobile would like to be the first. He also wanted service available for the fire crews. Park Rangers were in favor of having cell coverage due to people needing to make emergency calls. He said that it would be maintained once every four months.

Hash wondered if they could obtain cell coverage with a shorter tower. Girling said the surrounding trees would get in the way of a shorter tower getting service. Hash asked if they could erect multiple 60' towers to get the same coverage as one taller one. Girling said he could if he had a limitless budget. Hash asked if it came down to an economical issue. Girling replied it was not purely an economical issue but good practical use. He discussed this in detail.

Hash referenced the previous tower proposal at 150' feet. Girling said they wanted to give the applicant, Clearview, the opportunity to have more services on that tower. Hashed asked about an economic benefit to the landowner and if they received a fee. Girling said that he was a tech only and did not know the business side of the deal. Hash asked, on a technical side, how they could reduce the height of the tower and provide the same coverage. Girling said he would not be able to. He discussed details of being able to have services on each tower and implied that at some point other services would want to build their own.

Netteberg wondered if this was the same model pine as the one in Whitefish on Edgewood. Girling said he did not know.

Tyler Ament, 146 Kickbusch Ln, worked with the Coram West Glacier Fire Department and was also helping build the tower. He reviewed some letters of support from the volunteer fire department. He said there would soon be a requirement to have LTE coverage for first responders. There was a big need for better coverage and better coverage location. He said it would add service to the Howe Ridge Fire. He felt that having better coverage closer to the entrance of the park and not just on Desert Mountain was a key responder need.

**PUBLIC
COMMENT
6:46 pm**

Elizabeth Blacker, 602 Wild River Dr. West, spoke in opposition of the application. She said it had become more acceptable to have cell towers in the National Parks due to the demands and social media. Her husband had worked as a park ranger and a fire service specialist. He had never mentioned a communication problem and access to their cell phones. She felt anybody could make up facts but there needed to be solid information behind the facts.

Gary Kauffman, 759 Belton Stage Rd., spoke in opposition of the application. He was a board member of the Middle Canyon Land Use Advisory Committee and expressed they were mainly concerned about the intrusion of the skyline. He brought up that the number one tourist spot in Montana was Glacier National Park and the preeminent view was essentially from Great Northern to the entrance of the park. He said that utility companies were all sensitive to the viewshed and placed them on the other side of the road; either underground or in the trees. He said he did not have an issue with cell towers or development, but an issue with the location of the tower and conflicting with the view shed. He felt Planning and Zoning had not been transparent because they had already

approved a 60' tower that, as a board, they had not been made aware of.

Sharon DeMeester, 130 Glacier Ridge Drive, spoke in opposition of the application. Her biggest concern was the viewshed into Glacier National Park. She pointed out that CALURS was developed specifically to protect the viewshed and people needed to realize how much time and money had been put in to the CALURS plan. She referenced the MCLUAC meeting and said that the applicant had a second location in mind for the tower on the south side. She felt it should be placed over there. She said putting a cell tower in the middle of the beautiful view was not acceptable and noted she had Verizon service and did not have issues in the park.

Richard Murphy, 1270 Belton Stage Rd., spoke in opposition of the application. He said it was a business venture. He did not feel there was a good way to camouflage a monopine tree within 60' trees. He pointed out there was a plan B that would not be seen from The Discovery Center.

Onno Wieringa, 9550 Highway 2, spoke in opposition of the application and agreed with previous statements mentioned. He felt the tower would be on the wrong side of the road. He was glad the proposed tower would not have lights. He questioned how tall the adjacent trees were to the monopine. He also questioned if this was redundancy of utilities, which he implied was a good thing, but questioned if there was a bigger need on Hwy 2, closer to Essex. He said any first responder would tell you, during an emergency, people jumped on their phone and therefore they would need a second back up.

Lindsey Bengtson, 2667 Old Hwy 2 E, spoke in opposition of the application. She quoted CALURS and said allowing the cell tower would begin the slow erosion of what they had worked so hard to preserve. She said the application was not in accordance with CALURS. She had AT&T and no coverage issues. She felt the current photos did not clearly represent HWY 2.

Richard Turbiak, with Citizens for a Better Flathead, 14 3rd Street East Ste. 240, spoke in opposition of the application. He addressed that CALURS allowed a public utility structure as a minor use but disagreed that a cellular communication tower was a public utility structure. He read Montana Code Annotated 693101 section F. They asked that the conditional use permit be denied on the grounds that pro-cellular communication tower was not a public utility structure and was not a permitted use within the Middle Canyon CALURS.

Steven Alejandro, 2001 McMannamy Draw, spoke in opposition of the application. He said the board was not given enough information to make an informative decision. He was concerned about the future demands that 3G, 4G, and 5G would bring. From his professional experience, working for the Department of Defense in communications, they needed to have a map with an

overlay that assessed each band and how much coverage it would reach. He urged the board to request additional information. He questioned if a 108' tower would be significantly better than a 60' tower and said they should question what the future capacity would be with the demand. He felt there was a lot of important information missing.

Catherine Beers, 12127 Hwy 2 East, spoke in opposition of the application. She said they had a wedding venue on the adjoining property. The monopine would heavily impact her business and would be an extreme eyesore. She said people came to Glacier Park for the beauty, not for cell phone service. She felt like the pictures represented this evening were just smoke and mirrors.

Alison Godfrey, 2001 McMannamy Drive, spoke in opposition of the application. She believed, if there was a necessity for better cell phone coverage, they could find another spot. She did not want it to ruin the wonderful view. She did not feel like it should hurt local business people that depended on the view for their business. She spoke against an outside business ruining the livelihood of the local people.

Jill Rocksund, 125 Edgar Lane, spoke in opposition of the application. She was concerned about the infringement on the viewshed. She said the height of the 60' tower, already approved, was close to the height of the other trees and felt that tower would not be as bad. She was concerned lights may be added to the tower down the line. She questioned the impact on firefighter crews trying to get in the park with a tower that height. She said it was against the CALURS plan and it should not be approved.

Paul Detoni, 1245 Hwy 2, spoke in opposition of the application. He used to own Mule Shoe Outfitters, LLC in West Glacier for 18 years. He pointed out there were over 45 repeaters in Glacier Park. He said any firefighters had a Motorola radio with them to communicate. He believed there was a better place to put the tower. He did not have cell service issues and felt like there was good communication that may just need to be refocused on.

Byron Beers, 12127 Hwy 2 East, spoke in opposition of the application. He was in agreement with what had been previously mentioned. He asked if the applicants were co-locating their service on the tower. He said that they were not made aware that the 60' tower had been approved and was surprised when they started digging. He questioned the cell tower capacity and hand off and the benefits. He said the tower proposed last year sat in a depression and this tower would be sitting on a knoll and would sit much higher. There might be very little difference visually from the 150' proposed last year and the 108' tower proposed this year.

**APPLICANT
REBUTTAL
7:21pm**

Bill Ray with Clearview Tower, 90 West Madison, Belgrade, built a lot of towers throughout the state. He tried to mitigate as much as possible. He said it would not break the skyline while traveling down Hwy 2 and would only see it for a couple of seconds if traveling down Hwy 2 at the speed limit. He said Great Northern would be affected. He said that it would help T-Mobile get better coverage going in and was the best location for that; going across the street would not give the same service.

Ezell clarified that the Middle Canyon Land Use Advisory Committee was not made aware of the 60' tower because they did not have a quorum at that time. The Planning Office considered the tower to be a public utility and she cited the Montana Code that stated it was a regulated telecommunication service. She also cited the regulations that there were no height limitations for this structure. She also noted that a minor land use did not require adjoining property owner notification.

**BOARD
DISCUSSION
7:25 pm**

Netteberg asked if the 60' tower was going to be a monopine. An unidentified participant said it would be a monopole and would be painted to match the background.

Klempel asked if it would service a 5G at 108'. Girling went over logistics and prediction models, and whether or not it would cover. He said it was just a prediction.

Hash asked about the plan b; putting the tower on the south side of the road. He also asked if they could put a tower outside of the viewshed that would give the needed coverage. An unidentified tech representative replied that there was a mountain blocking the coverage in to the park if the tower was placed on the south side of the road. Ament gave his interpretation of the viewshed off of Hwy 2 and said it would not be intrusive.

Hash wondered if the tower would visually be the same height as the tower purposed last year. Ray replied no. Hash asked for clarification on the public comment regarding the previous proposed tower being in a depression and the current proposed tower being on a knoll. Mulcahy gave the data to support that the current proposed monopine would not be as visible as the previously proposed tower.

Hash said the reason the previous tower had been denied last year was because of the neighborhood impact. Hash asked what they were doing this year to address those concerns. Ray said they had spared no expense getting the monopine in response to some of the concerns brought up in the previous application.

Hash was concerned of the potential competition between service providers needing to get their own tower and unwilling to share a tower. There had been public comment that people were able to get coverage with other providers in the park. Hash wondered why there wasn't sharing between the towers and why other providers were able to get coverage in the areas that they were requesting the tower for. Ray said the board could request a study from the other companies to show their coverage. He said the reason why other companies had service was because of Desert Mountain and it was very limited. Girling said that they were looking to locate on Desert Mountain as well. He talked about how the tower will help T-Mobile customers get coverage; not just AT&T and Verizon.

(Inaudible discussion from people in the audience.)

He stated that he understood the concern of the viewshed but was trying to identify if it was needed for public safety as well. Hash clarified that he was asking because this had not been a part of the discussion last year and Ament was sort of representing first responders.

Noble questioned staff about commercial vs. public utility and referenced a previous file. Staff answered that the one he was talking about was a private radio tower. Noble wondered if staff questioned the county attorney on commercial vs. public utility designation codes. Mussman said they were not contacted, however, the Federal Telecommunications Act of 1998 and Montana Code identified cell towers as public utility. Ezell said it was also in the Flathead County Zoning Regulations. Noble also questioned CALURS regulations that said it should not interfere with the viewshed. Mussman said if it was a commercial or industrial development, it shall not extend above the ridgeline of hill, mountain, or any elevated topography so as to inner stat with the skyline as viewed from US Hwy 2. He said the issue was that if the board determined that it was a commercial or industrial development, then it would be above the skyline; but if it is a public utility it would not be a commercial or industrial development.

Purdy got up and said that The Federal Communications Act, Montana Code, and Telecommunications Act all defined cell phone towers as a public utility. He also brought up that the pictures presented were at 120 feet and, as measured against the adjacent mountains, it still did not rise above the viewshed. He said that there was no definition of viewshed in CALURS or in the Flathead County Zoning Regulations. He argued that the viewshed would be measured against the background mountains and, as applied for, it did not rise above.

Hash pointed out to Kauffman that it was contrary to what he had said. Kauffman replied that MCLUAC referenced their recommendation on the expert saying, in the application, that the backdrop of the tower would be the skyline. He also wanted to point out that nobody had talked about the transmitters that

would be on the tower, in the skyline as well. He said it was not just a pine tree, it was going to be a pine tree with big boxes on it.

Ament said that you could camouflage the antennas on it. *(The rest was inaudible)*

Noble wondered if the pictures of the monopine was really what it was going to look like or if it was just conceptual. *(Person, who did not identify himself answered but it was inaudible.)*

Staff called point of order because people were not identifying themselves before they spoke. Hash clarified with the public that if they were asked a question, they needed to stand and state their name. He also requested people not talk on top of each other.

Netteberg asked Beers where she took the picture she presented. She replied that they were common pictures off of the internet for standard common monopines.

Noble asked to see a picture of the monopine. Ament presented a picture on a laptop and pointed out the transmitters. *(Inaudible conversation from Ament.)*

Dyck asked if they had taken care of the access issue. Ray said they had a recorded access easement now. Ray also wanted to put on the record that they had already started the construction on the 60' tower.

Klempel reviewed a letter from JimBob Pierce with Two Bear Air suggesting putting a repeater on it because the area was poor for radio traffic to the north. She wondered if they could make a repeater as a part of a condition. Ray said he would be glad to put anybody on it for emergency services. Klempel also pointed out that there was another letter of support from Sperry Chalet.

Hash felt that there was significant neighborhood impact and he wanted to protect the viewshed but he was also considering the safety side of it. He said the picture shown of the tower looked just like a pine tree. He said it would be hard to tell the difference from afar and they were trying to camouflage it. He did feel that if the tower went through, it would have a significant impact. He also questioned where technology was going to be in 5 years; would it be enough. What would happen if a fire came through, would it be the only thing left standing? Those were some of the significant issues that the board needed to consider.

Noble said he agreed with Hash; especially with the testimony about CALURS and not being compatible with that plan. That was what was weighing on his decision. He saw the need for it and acknowledged that the applicants had worked hard to camouflage it. He also understood how it was going to impact

the nearby businesses, people's livelihood, and general aesthetics of the area.

Hash asked about the CALURS neighborhood plan and Canyon Plan and asked how the board should take it in to the consideration. Mussman said it came down to whether commercial or industrial development. Hash wanted to know about immediate neighborhood impact. Ezell said it depended on the specific criteria for neighborhood impact. Ezell based her staff report on the exact criteria in the zoning regulations and whether or not they were met. Hash brought up that they were only examples of things that could be detrimental and there were other things that could be detrimental as well.

Netteberg did not think the tree looked that intrusive. He shared personal experience where he had experienced injuries, while in the park, and could attest that there was some cell service there but he understood the need for new technology.

Dyck said that there were a lot of parts to look at, on both sides of the issue. He noted the 60' tower was already being built and there was going to be an issue regardless. He asked the applicant if he was conditioned to make the 60' pole a monopine. The applicant replied no, he could paint it bright orange if he wanted to. Dyck mentioned that the issues they had with it last year was that the proposed tower was 150' with the potential of lights. Ray said it would not be lit. Dyck was unsure that, while driving the speed limit, one would be able to see it. He also questioned if it was considered public utilities or commercial and referenced that state and federal refers to it as public utilities. He also acknowledged that they have right and legal access to the property, which was important. He also saw the importance of redundancy due to Desert Mountain being the only place that had a tower and if it had a fire there would be a significant impact. He was looking at it as a safety concern as well. He had work experience in the park and had a different carrier that occasionally would lose service altogether up there. He saw the importance of the safety issue and saw that the applicant was trying to make it work.

Klempel said she agreed. She questioned when the regulations were last updated. Staff went through what regulations had been updated and when. Klempel asked if, by state law, they needed to be updated every 7 years. Mussman replied not on neighborhood plans; growth policies yes. Montana code was silent on the neighborhood plan update requirements

**MOTION TO
ADOPT F.O.F
(FCU-18-07)
8:04 pm**

Netteberg made a motion, seconded by Dyck, to accept Staff Report FCU-18-07 as Findings-of-Fact.

**BOARD
DISCUSSION
8:04 pm**

None

**ROLL CALL TO
ADOPT F.O.F
8:04 pm**

Motion passed on a 4-1 on a roll call vote. Hash dissented.

**MOTION TO
APPROVE
(FCU-18-07)
8:05 pm**

Dyck made a motion, seconded by Klempel, to approve FCU-18-07.

**BOARD
DISCUSSION
8:05 pm**

Hash clarified with staff that both camouflaging the tower, as well as no lights permitted, were both a part of the original application. Ezell replied yes and added they could not put lighting on it in the future either. Mussman said the only way they could add lighting was if they came back and went through the process again.

Noble clarified that they did not need to add any conditions regarding camouflage [because it was already a part of the application]. Ezell said in the application they did cite the word “monopine”.

Hash asked Dyck if that was a part of his motion and Dyck replied yes; even if they needed to have a model number. Klempel agreed to second it as long as they had a model number or a picture to refer to. Mussman said that it was a part of the record now and the picture that was reviewed and sent to the Planning Office will be a part of the application. Mussman said when they go to final inspection, they will compare what had been done to what had been submitted.

Hash did not feel like it was the right time to make this type of a decision because it was going to have significant impact. He did not want this to become a floodgate for other applications for other towers. He acknowledged that the applicants did a good job this time but the facts were still a little fuzzy about coverage.

**ROLL CALL TO
APPROVE
(FCU-18-07)
8:09 pm**

The motion passed on a 3-2 roll call vote. Noble and Hash dissented.

**HARRIS AND
GILBERT
(FCU-16-18)
8:19 pm**

By Court Order, the Flathead County Board of Adjustment shall reconsider the application for a conditional use permit issued to Monica Harris and Lisa Gilbert (FCU-16-18). During its reconsideration the Board shall review the record and make findings of fact and, as appropriate, conditions related to short term rentals. The Board shall also review the record and make findings of fact regarding the following:

- Whether the application at issue is for a business, such that the Flathead County Zoning Regulations applies to the application, or a commercial use;
- Whether and to what extent the application complies with the applicable Neighborhood Plan;
- Whether and to what extent the application shows that there will be adequate access, more specifically the factual basis for finding that there will be adequate roadways due to widening roadways where feasible and installing turnouts where necessary.

**STAFF REPORTS
8:19 pm**

Nielsen reviewed the Staff Report FCU-16-18 for the board

**APPLICANT
PRESENTATION
8:26 pm**

Monica Harris, 500 Wild Swan Retreat, did not feel like it was necessary to make a full presentation tonight. The proposed use of the property had not changed. The only thing that had changed was that they had put forth a considerable amount of time and expense to meet the conditions set forth by the board last year. The courts were requesting the BOA to review finding of facts on three issues. She made clear that the three issues were the only things they were planning on addressing.

Hash asked Nielsen to address the occupancy allowance for each structure on the property. The applicants felt there may be more capacity than what was reported so Nielsen went to Environmental Health. It was indicated that the sewage capacity for the guest house was for 4 rooms. Nielsen said, if the board felt it was appropriate, they could have a maximum of 8 in the guest house but it was up to the board to deem whether or not 8 was too many. The board looked at other factors as well. Hash asked Harris what they were asking for. She answered occupancy for the maximum septic allowance; 4 in the tree house and 8 in the guest house. Last year they were approved 15 people be allowed to be on the property for day use, what they were asking was that some of those people be allowed to stay overnight as well.

Nielsen clarified that, per conversations she had with Environmental Health, they had been ok'd to allow 15 people stay overnight during a retreat because it would only occur 4 times a year, 4 days at a time. Environmental Health was confident that the sewage capacity could handle that.

Sean Frampton, 530 W 19th St. Ste. 301, was the attorney representing the applicants. He wanted to highlight the point regarding the number of guests allowed and felt there needed to be a reason to limit the maximum use due the

fact they now had three septic systems. He went through the courts findings and wanted to submit his comments formerly to the board; which had been placed before them. He asked they consider the suggested small edits in their findings. He asked them to focus on what the court had remanded only and was unsure of how public comment would affect that but he asked that the board limit their consideration to those three.

Hash asked that Frampton highlight the edits he had requested. He discussed finding #22 and signage; he proposed they change the verbiage to reflect that the signage was of a non-advertising nature. Nielsen clarified that the signage was all internal and was exempt under sign regulations. Frampton proceeded to discuss finding #31 and proposed that the verbiage reflected that the proposed use of short term rentals and camp and retreat center was residential. Although money was exchanged for services, the primary use for the property was residential and agricultural in nature. He made suggestions on what he would like to say and implied that it needed to be made very clear because being commercial vs. residential would affect the width of the road.

Nielsen said that the court order differentiated between commercial and residential. She said that they had referred to the Flathead Zoning Regulations that roadway requirement did not apply to an activity that was merely commercial use but not necessarily a business. She felt it was important to acknowledge that it was commercial, not a business because then it would not have met road requirements as the zoning regulations provided several types of commercial uses in the AG-20 zoning district.

Frampton addressed that the court said on page 7 and 8 that the record was devoid of any finding of fact of where the widening would occur, where the turn outs would be installed, and whether the location of the widening would be sufficient to the right adequate access. They had the professional traffic report done and it showed it was.

He requested an edit in finding #4 to add the verbiage regarding being in compliancy with the Bigfork Neighborhood Plan to include “and the Growth Policy” to address the courts finding that the board did not address the Bigfork Neighborhood Plan and the Growth Policy.

**PUBLIC
COMMENT
8:41 pm**

Dale Whalen, 110 Swan River Rd., spoke in support of the application. They were small business owners in the Bigfork area and are in support of the applicants because of their contribution to the Bigfork economy. He thought the road was adequate.

Jennifer O’Connell, 3065 River Lakes Dr., spoke in support of the application. They were a local family who had utilized the short-term rentals on the neighbor’s property and ultimately moved back to the Flathead County because of their stay. She thought the road was adequate.

Michelle Wiggins, 7391 MT HWY 35, spoke in support of the application. She said that the property was unobtrusive and serene in nature. She had been down there with a horse trailer and did not have a problem accessing the road. She felt like there was no interference with the neighbors because you could not see them; there was a wide forested space between properties.

Vergil Jackson, 109 Upper Pierce Ln., spoke in favor of the application. He thought the access to the property was adequate.

Jody Bakker, 248 Sherman Lane, spoke in favor of the application. He was a Bigfork resident who had worked on the property throughout property owners' changes. He did work on the road as the traffic engineer had suggested. He also installed the septic systems on the property. He supported the applicants in their endeavor.

Cliff Palmer, 378 Wild Swan Trl., spoke in opposition of the application. He owned two parcels adjoining the property. He said most of the neighbors were against the camp and retreat use. He turned in a petition from the neighbors to show their opposition to widening Drew and Julian Lane and were also opposed to any adult camps. He said the applicants had originally proposed to only have quiet artsy people but had youth camps there. He said he was not opposed to vacation rentals as long as they were reasonable occupancy.

Rob Anker, 622 Wild Swan Trl, spoke in opposition to the application. He was an adjacent property owner to the applicants. He loved the vacation rental guests. He was a retired educator and his passion was outdoor education, however, he did not want children camps because of the neighborhood impact. He was concerned about losing the tranquility of the neighborhood. He was also concerned about the road easements and maintenance. He felt like this particular issue had broken down their community's togetherness.

Jim Bonser, 345 Rocky Woods Lane, spoke in opposition of the application. He was a Bigfork resident who had been a member of Bigfork Land Use Advisory Committee (BLUAC) when the CUP went to BLUAC in December of 2016. He did not think the proposed use complied with the Bigfork Neighborhood Plan.

Cheryl Palmer, 378 Wild Swan Trail, spoke in opposition of the application. She was an adjacent property owner. She said they did not want youth camps or large groups of people on their roads. The neighbors had gotten together and updated their road association. She showed the road association documentation and said that Ken Kalvig was working on it. They were opposed to the camps and retreats and did not want kids due to there being no buffer. They could hear everything. The area was abundant in wetlands and they were unable to plant trees. She said the camp and retreats and noisy dogs have scared away the elk.

She asked that the BOA honor and respect their covenants.

**APPLICANT
REBUTTAL
9:08 pm**

Harris said they appreciated their neighbors and reminded the board that, according to the courts, there were only three issues to be considered tonight.

**STAFF
REBUTTAL
9:09 pm**

Nielsen mentioned that a site visit was completed by the staff, along with the code compliance officer, and all conditions had been met.

**BOARD
DISCUSSION
9:10 pm**

Hash asked staff if they had any concerns about public comment in regards to the three issues at hand. Nielsen said not related to the court remanded 3 issues.

Hash asked about the comments regarding access activity, too many people, access noise, and how it applied to what they were looking at tonight and if it was a concern to the Planning Office. He wondered if they should limit the amount of people. Nielsen said that from a planning perspective, she thought 8 people in a 3 bedroom house was a bit much but it was not her decision. The Zoning Regulations stated that it was limited to the sewage capacity. Nielsen treated it like a standard review for short term rentals. She said one could add a commercial aspect to a residential property. There had been a lot of work done to those roads in question and she felt like they had met the widening of the road. She did feel like the road needed to be maintained and trimmed. As far as the Bigfork Neighborhood Plan, it was an addendum to the growth policy. She felt adding the language requested by Frampton was not a bad idea.

Hash asked if the wetlands were a non-issue and Nielsen said it was as far as the items this evening. She said, as far as short term rentals were involved, she trusted the representative with Environmental Health and her judgement for septic system; which would be the only thing that would play in to the wetlands.

Mussman added that, at the time the application was originally heard, the county had not adopted the short term rental regulation. The regulations identified short term rentals as a residential use, which would not be subject to road widening requirements. The camp and retreats were still limited to 4 times a year, with no more than 15 people, for 4 days. The conditions for maximum occupancy was determined by septic capacity, determined by the Environmental Health Department. He also added that the growth policy and neighborhood plans are not regulatory and did not confer any authority to regulate. The Growth Policy and neighborhood plans were intended to give direction and guidance when consideration is given to adopting, amending, and interpreting

zoning regulations. Mussman said that they did an evaluation of the growth policy as requested by the judge and didn't feel like it was needed to interpret the zoning regulations.

Noble asked for clarification on what the sewage system had originally been approved for. Nielsen replied that it was to be determined based on their upgrades.

Mussman clarified that the applicants did have a public accommodation license, which required the Health Department review for fire and safety inspection, building inspection, water testing, etc. They were compliant with the short term rental regulations.

Noble said, in reference to the wetlands, they had to go through a non-degradation analysis to get a septic permit. The fact that they had gotten their septic permit meant that there was not an impact that would be detrimental to surface water.

Hash asked if there were any other questions and opened it up to the public. Palmer stated that as soon as the applicants had received their permit "the weddings popped right back up". She read the advertisement information that she had. She said that at the previous hearing the applicants had said they would not have any weddings or youth groups and she felt like they had lied to the neighbors and the board.

Dyck asked for clarification on what had been approved. Nielsen clarified they had been approved for short term rentals and also events up to 4 times a year and 4 days in length. Dyck mentioned they were the only camp and retreat that had not been required to provide a 25 ft. easement. Nielsen addressed that things had evolved (i.e. There had been a change of directors) and ultimately it came down to what the current director and the board said. Dyck said the concern he had was that actual access to the property and the easements were for specific pieces of property. He did not see how the access went all the way through. It appeared that they did not have authority to widen the road through everyone else's property. He asked for clarification.

Frampton said he was not sure. He deferred to the applicant who was an attorney. He did say that it was one of the issues that Ken Kalvig had raised in the appeal and the court did not address it. It had not been sent back to the board for that question.

Dyck said he was just trying to clarify because it had gotten a little fuzzy between the short term rentals and the camp and retreat portion of the application.

Frampton said it had not been addressed in the court. Nielsen provided the court documents in which it stated that the legal parameters for the easement are not

for the board to decide and are not proper before the court.

Klempel asked if it had originally been conditioned to be 20' wide. Nielsen said it was not. She read condition #19.

Mussman said it had been discussed at length and there had been a professional expert that supplied a report on the road improvements. He read the definition of Camp and Retreat Center in the regulations and said that access and roads in a rural development was not going to look like 1st Ave W, they are narrow and most of the time not paved. The rural roads required a low speed limit. He felt there was a bit of disconnect in the definition of a camp and retreat center and the type of road that could be required. He felt this application had adequate access.

Netteberg said that he had driven back there and it was about rural and rustic as it could get. He said the word "neighborhood" had a broad scope. He also heard a comment that said "when you drive in there, you drive by everybody's home". He drove in there and never saw another home. He said he went out there and didn't see any dogs barking. He was confused by what was said vs. what he saw with his eyes. He said that there were county laws against dogs barking.

Palmer shouted out "Not for guard dogs". Netteberg shared that he had personal experience with the matter. Netteberg said that he felt like the board had done their job.

**MOTION TO
ADOPT F.O.F
#14 THRU #34
(FCU-16-18)
9:29 pm**

Netteberg made a motion, seconded by Noble, to adopt the additional Findings of Fact #14-34 for FCU-16-18 with an amendment to Finding #34 as followed:

34. The proposed land use generally complies with the Growth Policy and Bigfork Neighborhood Plan because applicable goals and text appear to generally support the request and the existing AG-20 zoning designation lists camp and retreat centers and short-term rental housing as conditional uses.

**BOARD
DISCUSSION
9:31 pm**

None

**ROLL CALL TO
ADOPT F.O.F
9:32 pm**

Motion passed unanimously on a roll call vote.

**MOTION TO
APPROVE
ADDITIONAL
CONDITIONS
21-25
(FCU-16-18)
9:34 pm**

Dyck made a motion, seconded by Noble, to add and approve the additional conditions #21-25 of FCU-16-18.

**BOARD
DISCUSSION
9:34 pm**

None

**ROLL CALL TO
APPROVE
(FCU-16-18)
9:34 pm**

Motion passed 4-1 on a roll call vote. Klempel dissented.

**MYRON
NORDQUIST
(APPEAL 18-02)
9:34 pm**

An appeal by Myron Nordquist regarding interpretations of the Flathead County Zoning Regulations (FCZR) made by the Zoning Administrator during the consideration of a request for an Administrative Conditional Use Permit by David & Sondra Shenton (FACU-18-23) to allow 'short-term rental housing' of the single family dwelling on property located at 101 Peaceful Lane, Lakeside, MT. The subject property is approximately 1.141 acres and can legally be described as Lot 4 in Block 1 of Peaceful Bay Subdivision in Section 20, Township 26 North, Range 20 West, P.M.M., Flathead County, Montana.

**STAFF REPORTS
9:36 pm**

Mussman reviewed the memo regarding APPEAL 18-02 for the board.

**APPEALANT
PRESENTATION
9:46 pm**

None

**PUBLIC
COMMENT**
9:47 pm

Sondra Shenton, 3134 Sycamore Lane, Billings, was the owner of the property and the applicant of the CUP that was being appealed. She said she had VRBO'd the house. After receiving a call from the code compliance officer, she realized she was not supposed to do that without a CUP application and so she went through with the application process. She clarified that she had requested an occupancy of 12 because they had 12 beds but she never wanted 12 adults in the house at a time. She also said they do not want RV's parked on the grass. She would just like the opportunity to rent it.

**MOTION TO
DENY
(APPEAL 18-02)**
9:51 pm

Klempel made a motion, seconded by Netteberg, to deny APPEAL 18-02.

**ROLL CALL TO
DENY
APPEAL 18-02**
9:51 pm

Motion passed unanimously on a roll call vote.

OLD BUSINESS
9:52 pm

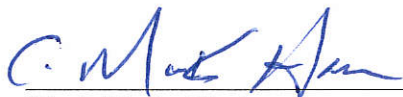
None

NEW BUSINESS
9:52 pm

Mussman mentioned that there would be another appeal next month that may be well attended. There was discussion about proper procedure for appeal. There was question on whether or not the original applicant got to speak; but there would not be public comment.

**MEETING
ADJOURNED**
9:54 pm

Meeting adjourned.



Mark Hash, Chairman



Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED 10/022018